BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of: **FOUR SEASONS HOTEL SEATTLE, et al.,** from a decision issued by the Director, Seattle Department of Construction and Inspections regarding a Major Public Project Construction Variance.	Hearing Examiner File: **HC-18-001** DECLARATION OF DAVE CORDARO IN SUPPORT OF THE CITY'S AND WSDOT'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

I, Dave Cordaro, declare as follows:

1. I am competent to testify and make this declaration based on my personal knowledge.

2. I am the Construction Inspections Manager for the Seattle Department of Construction and Inspections ("Department). I have held my current position for nine years.

3. I am responsible for managing the Department's Noise Abatement Control Program ("Program").

4. The Program is responsible for reviewing and making decisions on Major Public Project Construction Noise Variance ("noise variance") applications.

PETER S. HOLMES
Seattle City Attorney
Columbia Center
701 Fifth Ave., Suite 20150
Seattle, WA 98104
(206) 684-8200

5. On October 9, 2017, the Department received the Washington State Department of Transportation's ("WSDOT") application for a noise variance titled Major Public Project Construction Noise Variance Application Viaduct Demolition. Pages 1 and 9 of the application are attached to my declaration as Attachment 1.

6. The Department reviewed and analyzed WSDOT's application in consultation with BRC Acoustics and Audiovisual Design.

7. The Department considered the entire WSDOT noise variance application when evaluating the merits of the noise variance application.

8. Other Noise Abatement Control Program staff who participated in reviewing the noise variance application attended a November 14, 2017 public meeting. I was present at the March 8, 2018 noise variance public meeting.

9. The Department considered the public testimony and WSDOT's responses at the November 14, 2017 and March 8, 2018 public meetings when evaluating the merits of the noise variance application.

10. The Department considered WSDOT's statement at the March 8, 2018 public meeting that the project would be completed 40 percent sooner if a noise variance was granted as applied for when evaluating the merits of the noise variance application. A partial transcript of the March 8, 2018 meeting is attached to my declaration as Attachment 2.

11. I attended meetings with WSDOT and Department representatives on August 23, 2017 and January 30, 2018 where the variance and economic factors were discussed.

12. WSDOT stated that project costs would increase by 40 percent without a noise variance at the August 23, 2017 and January 30, 2018 WSDOT-Department meetings.

PETER S. HOLMES
Seattle City Attorney
Columbia Center
701 Fifth Ave., Suite 20150
Seattle, WA 98104
(206) 684-8200

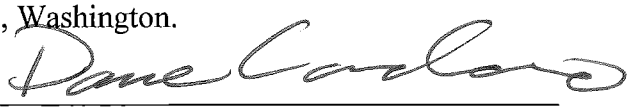
13. During the noise variance review process, the Department considered how complying with the Noise Code noise limitations would extend the project by 40 percent and cause the project to be functionally unreasonable by extending impact duration to the pedestrian and vehicular transportation system, and the use and access to buildings caused by the demolition.

14. For example, viaduct demolition will occur two blocks at a time, closing three intersections in a row. This entire work zone must be closed to the public with no pedestrian or vehicular crossings. As a second example, if no nighttime work is allowed by a noise variance it is impossible to demolish the portion of the viaduct next to the Burlington Northern Santa Fee railroad tunnel portal that can only occur at night.

15. Requiring that the project comply with Noise Code noise limits would render the project functionally unreasonable, and extend project impacts to the public, and surrounding businesses and residents.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 14th day of May 2018 at Seattle, Washington.

By: 

Dave Cordaro

PETER S. HOLMES
Seattle City Attorney
Columbia Center
701 Fifth Ave., Suite 20150
Seattle, WA 98104
(206) 684-8200

Attachment 1

1. Introduction

The Washington State Department of Transportation (WSDOT) is submitting this application to the Seattle Department of Construction and Inspections (SDCI) to request a Major Public Project Construction Noise Variance (MPPCNV) for the Alaskan Way Viaduct Demolition as part of the Alaskan Way Viaduct Replacement Program per the Noise Control Ordinance (Seattle Municipal Code, Chapter 25.08 [SMC 25.08]) and City of Seattle's Director's Rule 3-2009. This noise variance will cover activities occurring as part of the Viaduct demolition phase.

WSDOT requests a one year nighttime noise variance for the proposed Viaduct demolition to allow necessary construction work activities to occur during nighttime hours (between 10 p.m. and 7 a.m. on weekdays and between 10 p.m. and. 9 a.m. on weekends and legal holidays). WSDOT also requests that this MPPCNV allow impact work to occur between 7 a.m. and 10 p.m. on weekdays, weekends and legal holidays in addition to regular daytime hours of 8 a.m. and 5 p.m. on weekdays and 9 a.m. and 5 p.m. on weekends and legal holidays as provided in SMC 25.08.425. As part of the MPPCNV, this application proposes nighttime construction noise level limits for noise-sensitive receivers near construction sites.

WSDOT requests an MPPCNV pursuant to SMC 25.08.590 (Granting of Variance) and SMC 25.08.655 (MPPCNV) to allow construction noise generated on site to exceed the sound level limit as specified in SMC 25.08.410 and as modified by 25.08.420 and 25.08.425.

Completion of all construction activities during only daytime hours would extend the construction period and increase the economic cost to taxpayers.

WSDOT has developed expected construction activities and an estimated schedule for the Viaduct demolition. The analysis demonstrates that means and methods are available to meet the noise limits requested in this noise variance application. The contractor will propose their own construction activities and schedule, and create a detailed Noise Management and Mitigation Plan (NMMP) to meet the commitments WSDOT has made in this MPPCNV application and the noise variance issued by SDCI. Construction activities and equipment used by the contractor may not be specifically identical but are likely to be similar to those identified by WSDOT in the Proposed Construction Activities section.

This noise variance application includes the following:

- An NMMP to demonstrate that means and methods are available to meet the proposed noise limits.
- A description of the proposed construction activities including a description of the noisiest proposed activities.
- Existing baseline sound levels at noise-sensitive land uses within the project areas.

This noise variance application proposes nighttime construction noise limits for noise-sensitive receivers in proximity to construction areas. The proposed noise limits for the majority of the MPPCNV would include a 6 dBA (A-weighted decibels) increase over existing hourly noise levels measured between the quietest nighttime hours of 12 a.m. to 5 a.m. For 7 days during the Seneca ramp demolition and for 7 days during the Columbia ramp demolition, the proposed noise limits in the areas of the ramp demolitions would include a 16 dBA (A-weighted decibels) increase over existing hourly noise levels measured between the quietest nighttime hours of 12 a.m. to 5 a.m. The proposed descriptors and noise limits for the Viaduct demolition are based on WSDOT and SDCI noise variance coordination efforts which started in summer 2017 and a review of other SDCI decisions on MPPCNV applications for agencies such as WSDOT, Sound Transit and the Seattle Department of Transportation. These other variances were granted an increase of hourly average noise level limits ranging from 6 dBA up to 15 dBA over measured existing baseline noise levels.

4.3 Criteria for a Major Public Project Construction Noise Variance

4.3.1 SMC 25.08.655.A: The Criteria for an MPPCNV

The criteria for an MPPCNV are stated in SMC 25.08.655.A as follows:

> *A. The Administrator may grant a major public project construction variance to provide relief from the exterior sound level limits established by this chapter during the construction periods of major public projects. A major public project construction variance shall provide relief from the exterior sound level limits during the construction or reconstruction of a major public project only to the extent the applicant demonstrates that compliance with the levels would:*
>
> *1. Be unreasonable in light of public or worker safety or cause the applicant to violate other applicable regulations, including but not limited to regulations that reduce impacts on transportation infrastructure or natural resources; or*
>
> *2. Render the project economically or functionally unreasonable due to factors such as the financial cost of compliance or the impact of complying for the duration of the construction or reconstruction of the major public project.*

Completion of all construction activities during only daytime hours would extend the construction period and increase the economic cost to taxpayers.

4.4 WSDOT Term of Proposed Variance

4.4.1 SMC 25.08.655.B: The Term of the Proposed Variance

SMC 25.08.655.B states:

> *B. A major public project construction variance shall set forth the period or periods during which the variance is effective, which period or periods shall be the minimum*

Attachment 2

compare, assuming that would, you know, hour-for-hour would extend the duration day-for-day. And I don't remember what the numbers are.

Bruce, are you around? Do you remember what you came up with?

MR. NEBBITT: I am around. So I think what Brian was saying is pretty accurate about the more hours they can get in a day, the fewer days it will take, and I'd probably say even a little more so just because you're not having to get going each day and start up the equipment and everything, it's already running. So I think as a starting point, if you can get 40 percent more hours, say, in a day to do the impact work, for instance, you'll get done at least 40 percent sooner. You'd overcome the inefficiencies of starting up each day.

MR. NIELSEN: So that was as detailed in that calculations we've gone through.

SPEAKER 13: Okay. Thank you.

SPEAKER 14: So you've mentioned for the significant noise event that residents, businesses would be notified at least three days in advance on -- but your parameters were -- what was the distance in the parameters again?

MR. NIELSEN: So it's before -- three days

concentrating or going to sleep because, for example, there is a leaky faucet, that's not a lot of noise, but it's enough to disturb your concentration.

MR. NIELSEN: Understood.

Yes?

SPEAKER 22: I've actually got a number of questions, but because of the time restrictions I'm going to wait until the formal comments that I'm signed up for to ask them.

MR. ORTH: Okay.

SPEAKER 22: But I do have one follow-up to someone who asked, but I think the answer was partially answered by Bruce over here (indicating). And then the question I think that I heard was these bids are going out for 24/7 demolition work with various levels of demolition.

Have any of the bids gone out for regular-hour demolition without overtime or without going into the off hours? Have these bids been looked at all?

MR. NIELSEN: There is only one set of criteria and, to be honest, because we don't have our noise variance -- what is in the TR, Bruce? Do you --

MR. NEBBITT: Well, I believe in the technical requirements are what we have -- let me back

up.

So we've been in one-on-one meetings with the four contractors weekly. We don't have the Major Public Project's noise variance yet. What we have told them was that you can do impact work until 8:00 p.m. Even though we're requesting 10:00, we've kind of braced them for maybe not the best case they could get, so maybe ratchet it back a bit. So we've told them. At this point it's backed, the impact work from about 7:00 a.m. to 8:00 p.m. And if we find out we get different hours, we'll notify them while they're still in the bid process.

SPEAKER 22: Okay. So none of these four companies have been specifically asked to put a bid in for hours from 7:00 until 10:00 p.m. only and -- and how long the project would take, because I think that would be a really great assessment or a comparison to what it would take for the project to be completed with the 24/7 work being done.

MR. NEBBITT: Well, so in these one-on-ones when we talked about extended hours per impact work, they have indicated that is extremely helpful in their bids, getting the extra hours, so all of them are expecting or hoping to get more hours than currently is allowed.